

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

TOM ROBINSON, ET EL.

Plaintiffs,

v.

IOWA UTILITIES BOARD,

Defendant.

DUANE ARNOLD SOLAR, LLC and DUANE
ARNOLD SOLAR II, LLC,

Intervenors.

CASE NO. CVCV062986

PETITION TO INTERVENE

COME NOW Applicants for Intervention, Duane Arnold Solar, LLC and Duane Arnold Solar II, LLC (“Intervenors”), by and through counsel, and for their Petition to Intervene and allege as follows:

INTRODUCTION

1. Intervenors seek leave from the Court to intervene in this judicial review of the Iowa Utilities Board’s (“IUB”) October 22, 2021 decision, because as current applicants seeking a certificate of public convenience and necessity (“CPCN”) before the Iowa Utilities Board for two solar projects (Docket Nos. GCU-2021-001 and GCU-2021-003), the rulings in this case will directly impact Intervenors’ rights in their IUB proceedings. Further, Intervenors are indirect wholly-owned subsidiaries of NextEra Energy Resources, LLC (“NEER”), which the world’s largest generator of renewable energy from the wind and sun, including 10 renewable generating projects in Iowa. NEER plans to develop additional solar in Iowa, and, therefore, any

ruling in this case will also directly impact the rights of those prospective projects before the IUB.

2. On January 4, 2021, Plaintiffs, Tom Robinson, et al., filed their Petition for Judicial Review of the IUB's October 22, 2021 Order in Docket No. GCU-2021-001 approving Coggon Solar, LLC's ("Coggon Solar") application for a CPCN. Among other things, Plaintiffs assert that the IUB: (1) violated their Federal and Iowa constitutional rights by granting Coggon Solar's request to waive a hearing and full procedural schedule; and (2) failed to apply the proper statutory and administrative criteria.

3. Intervenors submit that Plaintiffs mischaracterize and misapply the law, and, therefore, the IUB's October 22, 2021 should be affirmed.

PETITION TO INTERVENE

4. Intervention is expressly allowed under Iowa R. Civ. P. 1.407, as a right, or, in the alternative, as permissive intervention.

5. **Intervention of Right.** Iowa R. Civ. P. 1.407(1)(b) confers a right to intervene "[w]hen the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." The court's analysis focuses on the "interest" of the party requesting to intervene and whether there is a legal right that will be affected by the litigation. In determining whether an applicant has a legal interest, Iowa courts examine the source of the right claimed. *In Int. of A.G.*, 558 N.W.2d 400, 403 (Iowa 1997). An indirect, speculative, or remote interest will not provide one a right to intervene. *Id.*; see 59 Am.Jur.2d Parties § 134, at 591-92 (noting that, to have an interest in an action, a person must

assert more than a mere general interest in the subject matter of the litigation). Intervenor satisfy Iowa R. Civ. P. 1.407(1)(b), because Intervenor are so situated that the disposition of the instant action may as a practical matter impair or impede Intervenor's ability to protect that interest, and there is no party that can adequately represent its interests.

6. More specifically, Intervenor satisfy Iowa R. Civ. P. 1.407(1)(b)'s requirements to intervene as a right, because Intervenor are currently undergoing the same administrative review process before the IUB that is the subject of the instant judicial review of the IUB's order issued in Docket No. GCU-2021-0001. Specifically, Intervenor are the current applicants seeking a CPCN before the Iowa Utilities Board for two solar projects in Docket Nos. GCU-2021-0002 and GCU-2021-0003. In the instant case, Plaintiff's challenge the IUB's ruling in Docket No. GCU-2021-0001 in which it granted Coggon Solar, LLC's request to waive a hearing and full procedural schedule. Intervenor have also requested the same waivers in their IUB proceedings. Additionally, Plaintiffs challenge the IUB's application of statutory and administrative criteria in Docket No. GCU-2021-0001, which directly impacts the application of such criteria in Intervenor's proposed solar project dockets. This Court's review of IUB's rulings in the Coggon Solar proceeding will directly impact the rights of Intervenor and their proposed projects before the IUB. Therefore, Intervenor are situated in Docket Nos. GCU-2021-0002 and GCU-2021-0003 so that the disposition of the instant action brought by Plaintiffs will directly impact, including the potential to impair or impede, Intervenor's interests in the development and construction of their solar projects. No other party can adequately represent Intervenor's interest, because (1) the IUB is not a developer and owner of renewable generation in Iowa, and, therefore, does not possess the same rights to protect as Intervenor; and (2) Coggon Solar is not a party in Intervenor's dockets, nor is Coggon Solar in the same position of Intervenor as the

world leader in the generation of wind and solar, which, in turn, manifests in interests in current and prospective solar projects that cannot be adequately represented by Coggon Solar, which is not similarly situated.

7. If intervention is not granted as a right, permissive intervention should be granted pursuant to Iowa R. Civ. P. 1.407. Permissive intervention is granted “[w]hen an applicant’s claim or defense and the main action have a question of law or fact in common.” The rule further provides that “[t]he court shall consider applications for permissive intervention and grant or deny the application as the circumstances require,” Iowa R. Civ. P.1.407(4), and instructs that, “[i]n exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” Iowa R. Civ. P.1.407(2).

8. As explained, Intervenor’s have common questions of law in their IUB dockets as is being challenged by Plaintiffs: (1) whether the IUB erred in granting the waivers for a hearing and full procedural schedule; and (2) whether the IUB erred in its application of statutory and administrative criteria. The rulings of this Court on these common questions of law will directly impact Intervenor’s interests in their solar project dockets. For example, if the Court were to rule in favor of Plaintiffs, which it should not, Intervenor’s administrative review dockets will be directly and materially impacted, as the IUB would then be obligated to apply this Court’s ruling on common questions of law in Intervenor’s dockets. Further, given Intervenor’s interest in having this case decided as expeditiously as possible, they will abide by the Court’s procedural schedule and not delay or prejudice the adjudication of the rights of the original parties. Accordingly, if the Court does not grant intervention as a right, it should grant permissive intervention to Intervenor’s.

9. This Petition and the accompanying Motion to Intervene also satisfy the procedural requirements of Iowa R. Civ. P. 1.407(3).

WHEREFORE, Intervenor, Duane Arnold Solar, LLC and Duane Arnold Solar II, LLC, pray the Court grant this Petition to Intervene and allow them to intervene in this judicial review action.

Respectfully submitted,

/s/ Samantha C. Norris

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ATTORNEYS FOR INTERVENORS

DUANE ARNOLD SOLAR, LLC

AND DUANE ARNOLD SOLAR II, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 14, 2022, I electronically filed the foregoing with the Clerk of Court by using the Electronic Document Management System, a copy of which will be electronically served upon all counsel of record registered with EDMS via Notice of Electronic Filing or Presentation.

/s/ Samantha K. Heibel